

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

OCLC, Inc.

Plaintiff,

v.

**ANNA'S ARCHIVE, f/k/a PIRATE
LIBRARY MIRROR, et al.,**

Defendants.

Case No. 2:24-cv-00144-MHW-EDP

ORAL ARGUMENT REQUESTED

Judge Michael H. Watson

**Magistrate Judge Elizabeth A.
Preston Deavers**

**JOINT MOTION OF PLAINTIFF OCLC, INC. AND DEFENDANT
MARIA MATIENZO TO DROP DEFENDANT MARIA MATIENZO
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 21**

Under Federal Rule of Civil Procedure 21, Plaintiff OCLC, Inc. and Defendant Maria Matienzo jointly move this Court to drop Defendant Maria Matienzo from this action, with prejudice, for the reasons set forth below.

Respectfully submitted,

/s/ Jeffrey M. Walker

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Counsel for Defendant Maria Matienzo

MEMORANDUM OF LAW

On April 11, 2025, Plaintiff OCLC, Inc. (“OCLC”) filed its Notice of Voluntary Dismissal of Defendant Maria Matienzo (“Matienzo”) from this matter, which the Court rejected on April 14, 2025. Apr. 14, 2025 Order, Dkt. 48. Pursuant to the Court’s April 14, 2025 Order, OCLC and Matienzo jointly move for dismissal of Matienzo under Federal Rule of Civil Procedure 21, as OCLC and Matienzo (the only two parties to have appeared in this matter) have agreed to dismiss Matienzo from this action.

BACKGROUND

On January 12, 2024, OCLC filed this action asserting claims against Defendants Anna’s Archive, Matienzo, and other unnamed defendants, stemming from Anna’s Archive’s illegal hacking and scraping of OCLC’s WorldCat.org. *See generally* Compl., Dkt. 1. OCLC asserted twelve causes of action in its Complaint: (i) breach of contract, (ii) unjust enrichment, (iii) tortious interference of contract, (iv) conspiracy to tortiously interfere with contract, (v) tortious interference with prospective business relationships, (vi) conspiracy to tortiously interfere with prospective business relationships, (vii) civil recovery for criminal acts violation of Ohio Revised Code § 2913.04, (viii) conspiracy to violate Ohio Revised Code § 2913.04, (ix) trespass to chattels, (x) conspiracy to trespass to chattels, (xi) conversion, and (xii) conspiracy to convert OCLC’s property. *Id.* at PageID 21–34.

Matienzo moved to dismiss OCLC’s claims against her, arguing the Court lacks personal jurisdiction over her and that OCLC’s claims against her were not sufficiently pled. Matienzo Mot. to Dismiss, Dkt. 21. OCLC and Matienzo jointly moved to stay discovery while the motion to dismiss was pending. Joint Mot. to Stay, Dkt. 43. On September 20, 2024, the Court granted the stay of discovery. Sept. 20, 2024 Order, Dkt. 44.

On March 21, 2025, the Court denied Matienzo's motion to dismiss without prejudice, while simultaneously denying without prejudice OCLC's motion for default judgment against Anna's Archive. Mar. 21, 2025 Opinion & Order, Dkt. 47. OCLC filed a motion for reconsideration of the Court's March 21, 2025 Opinion & Order as to OCLC's motion for default judgment against Anna's Archive, which does not directly involve Matienzo. *See* OCLC's Mot. for Default J., Dkt. 40. This motion is pending.

Throughout this litigation, OCLC and Matienzo have regularly conferred. At this juncture of the proceedings, OCLC and Matienzo have reached an agreement that Matienzo be dropped from this action. As a result, OCLC no longer seeks relief from Matienzo in this action. Therefore, OCLC filed a Notice of Voluntary Dismissal directed solely at Matienzo concurrently with OCLC's motion for reconsideration. Notice, Dkt. 48. This Court rejected that notice, reasoning that Federal Rule of Procedure 41 was not the proper procedural vehicle, but rather, Rule 21 was the proper vehicle. Apr. 14, 2025, Order, Dkt. 50. This joint motion followed.

LAW AND ARGUMENT

Rule 21 of the Federal Rules of Civil Procedure states "[o]n motion or on its own, the court may at any time, on just terms, add or drop a party." Rule 21 is the proper procedural vehicle by which a party may seek dismissal of its claim or claims against fewer than all parties in a multi-party action. *Letherer v. Alger Grp, L.L.C.*, 328 F.3d 262, 266 (6th Cir. 2003), *rev'd on other grounds*, *Blackburn v. Oaktree Capital Mgmt., LLC*, 511 F.3d 633 (6th Cir. 2008); *Murray Energy Corp. v. Cassidy, Cogan, Chappell, & Voegelin, L.C., et al.*, 2:18-cv-440, 2020 WL 4201666, at *1 (S.D. Ohio July 22, 2020); *Lester v. Wow Car Co., Ltd.*, No. 2:11-cv-850, 2012 WL 1758019, at *2 n.2 (S.D. Ohio May 16, 2012).

When evaluating a motion for dismissal under Rule 21, courts consider Rule 41 standards as guidance for analyzing potential prejudice to defendants. *Wilkerson v. Brakebill*, No. 3:15-CV-435-TAV-CCS, 2017 WL 401212, at *2 (E.D. Tenn. Jan. 30, 2017). The Rule 41(a)(2) factors that a court considers in evaluating prejudice include: “(1) the amount of time, effort and expense the defendant has incurred in trial preparation; (2) any excessive delay and lack of diligence on the part of plaintiff in prosecuting the action; (3) insufficient explanation for the need to dismiss; and (4) whether a defendant has filed a motion for summary judgment.” *Powell v. Honda of Am. Mfg., Inc.*, No. CIV.A. 2:06-CV-979, 2008 WL 2872273, at *3 (S.D. Ohio July 22, 2008) (citing *Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994)).

Here, OCLC and Matienzo agree that all factors weigh in favor of dismissing OCLC’s claims against Matienzo. OCLC and Matienzo have conferred multiple times throughout this litigation and based on this consultation, the parties have reached an agreement that Matienzo be dismissed from this action with prejudice, and that OCLC no longer seeks any relief from Matienzo.

In applying Rule 21, courts consider the prejudice to the nonmoving party. The purpose of this prejudice analysis is “to protect defendants who have put considerable time and effort into defending a case, only to have the plaintiff pull the rug out from under them by voluntarily dismissing the action.” *Wilkerson*, 2017 WL 401212, at *2 (quoting *Crozin v. Crown Appraisal Grp., Inc.*, Nos. 2:10-cv-581, 2:10-cv-764, 2012 WL 139219, at *2 (S.D. Ohio Jan. 18, 2012) (discussing prejudice analysis under Rule 41). Here, nonmoving defendant Anna’s Archive has put no time or effort into this case. It has chosen not to appear in or litigate it, thereby not incurring any time or expense in preparing for trial. OCLC has diligently pursued its claims against Anna’s Archive throughout this litigation. And there are no summary judgment motions pending before

the Court. OCLC has now agreed with Matienzo to dismiss her from this case so that the litigation focuses on obtaining a final judgment against Anna's Archive. Accordingly, all four factors weigh in favor of granting OCLC and Matienzo's joint motion here.

CONCLUSION

For the reasons above, Plaintiff OCLC, Inc. and Defendant Maria Matienzo respectfully request that Defendant Maria Matienzo be dropped from this action with prejudice pursuant to Rule 21.

Respectfully submitted,

/s/ Jeffrey M. Walker

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Counsel for Defendant Maria Matienzo

CERTIFICATE OF SERVICE

On April 15, 2025, this document and the accompanying attachment was filed electronically with the Clerk of the United States District Court for the Southern District of Ohio, Eastern Division, which will electronically serve a copy of the foregoing on all counsel of record for all parties, and will be served upon Anna's Archive at the following email addresses:

AnnaArchivist@proton.me
AnnaDMCA@proton.me
AnnaArchivist+security@proton.me
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/s/ Jeffrey M. Walker
Jeffrey M. Walker
An Attorney for Plaintiff OCLC, Inc.